* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Civil Miscl.(Main) No. 1103 of 2007

Date of Decision: DECEMBER 12, 2007

Kishan Chand ..... Petitioner
Through Mr. G.D.Gandhi, Advocate

versus

Smt.Sarla Goel & others .... Respondent
Through Mr. Arvind K.Gupta, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether reporters of Local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

This petition under Article 227 of the Constitution of India is directed against the order dated July 11, 2007 passed by the Additional Rent Control Tribunal, Delhi in RCA No.33/07 titled Smt. Sarla Goel & Ors. Vs. Kishan Chand. By virtue of the impugned order the petitioner has been ordered to be evicted from the suit premises under Section 14(1)(a) read with Section 14(2) of the Delhi Rent Control Act, 1958. (hereinafter to be referred to as 'Act').

It is not disputed by the petitioner that he has already availed of the benefit of Section 14(2) read with Section 15 of the Act pursuant to an order dated December 3, 2001 passed by Shri Rajiv

Mehra the Additional Rent Controller, Delhi in eviction case No. E-105/99 titled Jagdish Kumar Goel Vs.Kishan Chand. The petitioner is now facing the charge of committing second default in payment of rent to the respondent in respect of the suit premises. It is also not disputed that on the date the demand notice dated March 31,2003 was served upon him by the respondent, he was in arrears of rent for three consecutive months from January 2003 onwards. On receipt of demand notice from the respondent the petitioner had sent the arrears of rent for three months for the period from January 1, 2003 to March 31, 2003 by money-order on April 22, 2003. The respondents do not dispute that they refused to accept the money order and consequently the same was received back by the petitioner. Their case is that on their refusal to receive the money order the petitioner ought to have taken recourse to Section 27 of the Act by depositing the arrears of rent with the Rent Controller and he having not done so he was liable to be evicted from the suit premises on the ground of second default under Section 14(1)(a) read with provisio to Section 14(2) of the Act. In support reliance has been placed upon a judgment of the Apex Court reported in (2005) 7 SCC 211 Atma Ram Vs. Shakuntala Rani.

The tenant however submits that he having tendered the entire arrears of rent within less than a month of service of notice of demand by means of a money order he is protected, and has not

committed second default.

Having heard learned counsels from both sides, I feel, that reliance upon the above said judgment of the Supreme Court is misplaced. It was entirely on different facts. That was a case where the tenant had deposited a part of the arrears of rent under the Punjab Relief of Indebtedness, Act 1934 (“the Punjab Act”) and his defence was that the rent so deposited ought to be treated as having been paid to the landlord. The Court held that the case being under the Delhi Rent Control Act the deposit made under the Punjab Act could be of no avail to the tenant and since the deposit is not made under Section 27 of the Delhi Rent Control Act the tenant could not claim the benefit sought by him. In other words in the said case the court was only considering as to whether the deposit of arrears of rent under the Punjab Act could be treated as payment of rent to the landlord. In the case before me the tenant has not made any deposit and it is not his case that the arrears stood paid to the landlord. His case is that he tendered the rent by money order which the landlord refused to receive. It is this which makes the judgment of the Supreme Court inapplicable. The Supreme Court nowhere held that in case of vaild tender within two months of service of notice of demand the tenant further, in order to seek protection of the Act must necessarily deposit the arrears of rent so tendered and refused under Section 27 of the Act nor has the

Supreme Court held that if after refusal of the arrears validly tendered the tenant does not thereafter deposit the arrears under Section 27 of the Act then, in that case he must be taken to have committed second default. In fact the argument that since the tenant after the refusal of the landlord to accept the arrears tendered to him did not deposit the arrears under Section 27 of the Act he must be taken to have committed the second default runs counter to what is provided in Section 14(1)(a) of the Act. The Section itself says that the tenant would be entitleld to protection if he either pays or tenders the arrears of rent within two months of the service of demand. In other words the tenant is required to either tender or pay the rent to earn protection. The words “neither” and “nor” leaves no manner of doubt that if there is a valid tender of the arrears of rent within two months of service of demand he would be protected. As already noticed above the tenant through the money order tendered the entire arrears of rent within two months of the notice of demand. That tender fully satisfy the requirement of the provision leading to only one conclusion and that is that he has not committed the second default.

In above view of the matter the Controller rightly dismissed the eviction petition holding it to be not a case of second default. The learned Tribunal, however, with respect, fell in error and allowed the eviction petition. I find myself by the side of the learned

Controller. As a result the order of the Additional Rent Tribunal is set aside. The petition is allowed.

December 12,2007 **REKHA SHARMA,J.**
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